



POSTAL REGULATORY COMMISSION

39 CFR Part 3065

[Docket No. RM2020-4; Order No. 6221]

RIN 3211-AA26

Market Dominant Products

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting rules that describe when the letter monopoly does not apply to a mailpiece.

DATES: Effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: For additional information, Order No. 6221 can be accessed electronically through the Commission's website at <https://www.prc.gov>.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202-789-6820.

SUPPLEMENTARY INFORMATION:

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I. Background

The Postal Service has exclusive rights in the carriage and delivery of letters under certain circumstances. This letter monopoly is codified in the Private Express Statutes (PES), which are a group of civil and criminal statutes that

make it unlawful for any entity other than the Postal Service to send or carry letters. See 18 U.S.C. 1693-1699; 39 U.S.C. 601-606.¹

Section 601 provides specific instances (exceptions) where letters may be carried out of the mail (*i.e.*, not subject to the letter monopoly). These statutory exceptions include letters charged more than six times the current rate for the first ounce of a single-piece first class letter and letters weighing more than 12.5 ounces. See 39 U.S.C. 601(b)(1), (b)(2). A “grandfather clause” in Section 601(b)(3) also references exceptions from prior Postal Service policies and regulations. The statute also directs the Commission to promulgate any regulations necessary to carry out this section. See 39 U.S.C. 601(c).

II. Basis and Purpose of Final Rules

The Commission initiated this proceeding to determine whether regulations promulgated by the Commission may be necessary to carry out the requirements of 39 U.S.C. 601.² The Commission received a wide range of comments in response to Order No. 5422, but found it necessary to gather more information before promulgating regulations under Section 601. Thus, the Commission held this docket in abeyance and initiated a public inquiry seeking further input from the public.³

Based on the comments received in this docket and the comments received in Docket No. PI2021-2, the Commission filed a notice of proposed

¹ Although these provisions of the U.S. Code are customarily referred to collectively as the “Private Express Statutes,” they do not all relate to private expresses or prohibit carriage of letters out of the mails.

² Advance Notice of Proposed Rulemaking to Consider Regulations to Carry Out the Statutory Requirements of 39 U.S.C. 601, February 7, 2020 (Order No. 5422).

³ See Order Holding Rulemaking in Abeyance, July 2, 2021 (Order No. 5929); Docket No. PI2021-2, Notice and Order Providing an Opportunity to Comment on Regulations Pertaining to 39 U.S.C. § 601, July 2, 2021 (Order No. 5930).

rulemaking proposing new regulations necessary to carry out Section 601.⁴

Having received adequate input from the public in order to propose regulations in this docket, the Commission issued an order closing the public inquiry docket.⁵

Based on input from commenters and to maintain stability in the mailing industry, the Commission found that no substantive regulations were necessary at that time. Nonetheless, the Commission found it necessary to issue regulations that provide some clarity on the Section 601, and its relationship with the Postal Service's regulations. The Commission also found it necessary to provide a process for the public to seek clarification of the statute or the letter monopoly should the need arise in the future.

The final rules incorporate many of the suggestions identified by commenters, as well as additional clarifying language added by the Commission; however, the substance of the rules remains unchanged.

To clarify the rule proposed § 3065.1(a), the Commission accepts the Postal Service's suggested modifications and amends § 3065.1(a).

The Commission adopts proposed § 3065.1(b) without any modification, explaining that the rule will track the language of the statute in the rule.

The Commission finds that the text of proposed § 3065.2 may unintentionally limit the Postal Service's ability to perform its ordinary operations and introduce confusion where the Commission wishes to maintain stability.⁶ Based on concerns from TBC and the Postal Service, the Commission removes the words "issue guidance" from the text of the rules.

Finally, no commenter proposed changes to proposed § 3065.3, which provides procedures for parties seeking clarification or interpretation of the

⁴ Notice of Proposed Rulemaking for Regulations Pertaining to Section 601, November 24, 2021 (Order No. 6047).

⁵ See Docket No. PI2021-2, Order Closing Docket, November 24, 2021 (Order No. 6046).

⁶ See Order No. 6047 at 16 (describing commenter concern about substantive changes and expressing an intention to maintain stability).

statute or regulations concerning Section 601, and thus, the Commission adopts the proposed rule without modification.

III. Final Rules

The Commission adopts regulations necessary to carry out 39 U.S.C. 601 and places them in a new section in 39 CFR part 3065.

List of Subjects for 39 CFR Part 3020

Administrative practice and procedure, Postal Service.

For the reasons stated in the preamble, the Commission amends chapter III of title 39 of the Code of Federal Regulations by adding part 3065 to read as follows:

PART 3065—RULES FOR LETTERS CARRIED OUT OF THE MAIL

Sec.

3065.1 Applicability and scope.

3065.2 Prohibition on new regulations.

3065.3 Procedure for seeking clarification or interpretation.

Authority: 39 U.S.C. 503, 601.

§ 3065.1 Applicability and scope.

(a) The rules in this part implement 39 U.S.C. 601, which describes certain circumstances in which letters may be carried out of the mail.

(b) Notwithstanding placement in Postal Service chapter I of this title, the following provisions in parts 310 and 320 of this title are within the scope of this part and the Commission has the authority to interpret them:

- (1) Section 310.1 of this title;
- (2) Sections 310.2(b)(1) and (2) of this title; and
- (3) Sections 320.1 through 320.8 of this title.

(c) In the event of a conflict between 39 U.S.C. 601 and applicable regulations under parts 310 and 320 of this title, 39 U.S.C. 601 shall supersede any other generally applicable requirements.

§ 3065.2 Prohibition on new regulations.

(a) The Postal Service may not promulgate any new regulations or enter into agreements purporting to suspend or otherwise define the scope of the letter monopoly.

(b) The Postal Service may not promulgate any new regulations purporting to interpret 39 U.S.C. 601.

(c) The Commission has the sole authority to promulgate new regulations necessary to carry out 39 U.S.C. 601.

§ 3065.3 Procedure for seeking clarification or interpretation.

(a) The Commission may, on its own motion, initiate a proceeding under this subpart pursuant to § 3010.201(a) of this chapter.

(b) The Commission may provide interpretation of these regulations or 39 U.S.C. 601 upon:

(1) A party's request to initiate a rulemaking proceeding with the Commission pursuant to the requirements of § 3010.201(b) of this chapter; or

(2) A party's request for an advisory opinion from the General Counsel.

By the Commission.

Erica A. Barker,

Secretary.